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Defendant.

(Motion to Vacate Remainder of Sentence—#118)

His arguments in support of this motion are that he does not have a significant criminal background, he is a low risk of danger to the community, he has volunteered to be removed

1 from this country, his wife and children are preparing to leave this country to live with him in his
2 native land, he has completed the majority of his sentence, and that further incarceration would
3 serve no purpose and constitutes cruel and unusual punishment.

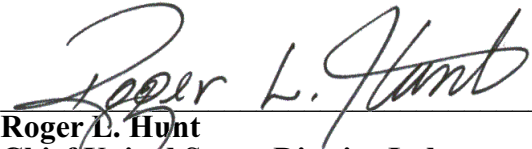
4 His arguments are without merit.

5 He cites to no authority for the proposition that requiring him to complete his federal
6 sentence when he has been paroled from other, state, sentences, constitutes cruel and unusual
7 punishment. He provides no authority that his 87-month sentence for distributing more than two
8 kilograms of a substance containing methamphetamine is excessive. He has not challenged this
9 Court's finding, at sentencing, that the sentence met the factors of §3853(a), nor has he successfully
10 appealed this Court's sentence on the ground that it is cruel and unusual. And the time to appeal has
11 run.

12 "District courts do not have inherent authority to reconsider sentencing orders."
13 *United States v. Morales*, 328 F.3d 1202, 1204 (9th Cir. 2003). Defendant does not cite any statute
14 that gives this Court the power to vacate the remainder of his sentence for the reasons he states.
15 Furthermore, Federal Rule of Criminal Procedure 35(a), which allows a district court to correct
16 arithmetic, technical or other clear errors, requires that a motion to that effect must be filed without
17 fourteen days after sentencing. "After that time, the district court loses jurisdiction to correct the
18 sentence." *Id.*, at 1205.

19 IT IS THEREFORE ORDERED that Defendant Fernando Fontes' **Motion to Have**
20 **Remaining Sentence Suspended or Vacated in the Interest of Justice** (#118) is DENIED.

21 Dated: May 25, 2010.

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23 
24 **Roger L. Hunt**
25 **Chief United States District Judge**
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